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November 20, 2007

Mr. Phil Isenberg
Chair, Delta Vision Blue Ribbon Task Force
650 Capitol Mall
Sacramento, CA 95814

Re: Delta Vision and the City of Antioch

Dear Mr. Isenberg:

In light of the Blue Ribbon Task Force's most recent version of *A Vision for California's Delta* and certain issues raised during the recent Delta Vision process, the City of Antioch believes it is important to again submit comments to the Task Force.

Antioch's initial comment is that the City is crafting its own vision of its future water supply based in part on the following principles:

- The City's water supply must be protected and preserved.
- Antioch must retain its water independence and self-sufficiency.
- The water rights system within California must be preserved.
- Ensuring a high level of water quality at Antioch is one of the single most important factors to protecting the environment and preserving species within the Delta as it represents the natural condition within this area.
- Upstream projects impacting the physical structure or water circulation within the Delta must be supported by sound science and must not adversely impact Antioch's rights.
- Antioch is aware of the issues impacting the Delta. Antioch did not cause these issues and is in fact impacted by them. Nevertheless, Antioch remains open to considering alternatives within the Delta and wants to be part of an overall solution as long as Antioch's rights and independence are preserved.
- Any proposed "solution" to the issues within the Delta must involve Antioch due to its unique location and history within the Delta.

Antioch's vision arises in part due to its unique location within the western Delta. As previously stated, the City has some of the highest priority water rights in the Delta. Antioch's municipal water supply depends on these rights and the quality of fresh water in the area in order to supply water to a population of over 100,000 residents.

As you may or may not be aware, Antioch is one of the oldest cities in California being established in 1850. Antioch has pre-1914 water rights with a priority of 1859. Due to its unique location at the far western edge of the Delta and its long history of water use, Antioch is truly the "miner's" canary with respect to the health of the Delta. The fact that Antioch has existed as a town and has diverted water from the western Delta for 150 years should play a major factor in determining both water quality and environmental milestones within the Delta. Antioch's very existence dispels the myth of the historic, variable Delta being widely discussed as part of the Delta Vision process.¹

Instead, Antioch has largely been left out of the process. The City has attempted to become involved in the process by discussing certain issues directly with the Department of Water Resources ("DWR"), including discussions regarding potentially mutually beneficial solutions.² However, these discussions have unfortunately been largely unfruitful.

Given Antioch's situation, it is not difficult to see that every long-term scenario discussed as part of the Delta Vision process will likely have some degree of negative impact on the City. Antioch also is very concerned about some of the potential near-term actions often referred to as the "no" or "low" regrets projects. Many of these near-term projects, such as channel barriers, will likely impact Antioch. However, it is uncertain what, if any, analysis exists regarding the potential impacts of these near-term projects. Scientists and DWR staff testifying before the Blue Ribbon Task Force admit that there is presently little evidence regarding the potential impacts of these near-term projects.

Even if such analysis was performed as to the near-term projects, such analysis would be specific only to these projects rather than to the entire Delta Vision process. This would very likely lead to the potential for ignoring or minimizing the cumulative impacts of such near-term projects as well as the long-term Delta Vision once that vision is implemented. Until some form of Delta Vision (which includes a recommended conveyance scenario) is adopted, it is simply not possible to know how such near-term projects would ultimately impact the Delta under any particular vision. At the prior Blue Ribbon Task Force meeting in October, there was discussion of using CEQA as a process to drive the Delta Vision. However, the idea of segmenting near-term projects from a larger, as yet defined future Delta Vision project would in fact violate CEQA on multiple

¹ Antioch's water quality has not always been pristine and the City has experienced saltwater intrusion. However, this saltwater intrusion is directly attributable to upstream diversions and out-of-Delta exports.

² Initially, the City was surprised to learn that the DWR did not even know of the existence of Antioch's water rights, its long-standing diversion, and a 1968 agreement between the DWR and Antioch.

levels. The environment as well as the long-existing water uses such as Antioch's should outweigh such "experimentation" on the Delta.

In addition, at the October 2007 meeting of the Delta Vision Blue Ribbon Task Force, there was much discussion of the reasonable use and the public trust doctrines. How and to what extent the Delta Vision process is considering invoking those doctrines and how they might impact Antioch remains unclear at this time. However, one of the most significant landmark water rights decisions has yet to be mentioned as part of these discussions: *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224. In that case, the California Supreme Court upheld the validity of the water rights priority system and held that it must be considered even when applying the doctrine of reasonable use.

Neither reasonable use nor the public trust gives the state carte blanche to invoke a form of equitable redistribution of water rights in and out of the Delta. In particular, it is difficult to comprehend how the public trust could be invoked to justify potentially destroying (or substantially altering) the very resource the trust is supposed to protect. Especially where the principle goal is to protect out-of-Delta water exports. Further, given the discussions of water transfers and water marketing as potential solutions, it makes little sense to inject uncertainty into the process via the specter of some form of state driven water redistribution. Antioch therefore joins with others who have testified that the water rights priority system must be preserved and would help rather than hinder the ultimate solution within the Delta.

The City believes that its vision of preserving Antioch's water supply is in fact compatible with the goals of the Delta Vision process. For example, protecting Antioch's rights and water supply ensures that an ecosystem and a water supply will be preserved. Antioch has been a model of self-sufficiency. Antioch has existed for over 150 years and preserving water quality in this area of the Delta has proven to be both sustainable and resilient. Preserving and improving Antioch's water supply also ensures the protection of the public trust by preserving the historic water quality in this area of the western Delta.

Antioch understands the complexity of the issues facing the Blue Ribbon Task Force and is supportive of examining potential long-term solutions for a number of different issues. Again, Antioch wants to be part of the solution. However, Antioch firmly maintains that part of any solution must be the preservation of Antioch's water supply. Antioch does not believe that boldly going forward on a process with little to no supporting scientific evidence and with a seeming disregard for long-standing water rights is likely to benefit anyone. Instead, such a course of action is very likely to lead to more significant adverse impacts and controversy. The Delta Vision process must take the time to get it right.

Thank you for your consideration of Antioch's position in this matter. Antioch intends to be very involved in the on-going process and is currently meeting with other in-Delta water users to discuss potential common interests and potential alternatives to the Delta Vision process. Again, Antioch would be pleased to discuss with you or the Blue Ribbon Panel how the City's own water supply vision can be protected within the

framework of the Delta Vision. If you have any questions, please contact Phillip Harrington, Antioch's Director of Capital Improvements/Water Rights, at 925.779.7025.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Jakel', written over a horizontal line.

JIM JAKEL
City Manager

JJ:ds

cc: Antioch Mayor and City Council
Senator Tom Torlakson
Assembly Member Mark DeSaulnier
Lester Snow, Director, Department of Water Resources (DWR)
Gerald Johns, Deputy Director, Department of Water Resources
Arlene Mornick, Assistant City Manager
Phillip Harrington, Director of Capitol Improvements/Water Rights
Lynn Tracy Nerland, City Attorney
Matthew Emrick, Soluri & Emrick, LLP
Sean Fitzgerald, Townsend Public Affairs, Inc.
Linda Best, Contra Costa Council
South Delta Water Agency